

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS**

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Reorganized Debtor.

Chapter 11

Case No. 19-34054-sgj11

MARC S. KIRSCHNER, AS LITIGATION TRUSTEE
OF THE LITIGATION SUB-TRUST,

Plaintiff,

v.

JAMES D. DONDERO; MARK A. OKADA; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; FRANK WATERHOUSE; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1 AND LAWRENCE TONOMURA AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #1; MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2 AND LAWRENCE TONOMURA IN HIS CAPACITY AS TRUSTEE OF MARK & PAMELA OKADA FAMILY TRUST – EXEMPT TRUST #2; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; SAS ASSET RECOVERY, LTD.; AND CPCM, LLC,

Defendants.

Adv. Pro. No. 21-03076-sgj

STIPULATION

¹ The last four digits of the Reorganized Debtor's taxpayer identification number are (8357). The Reorganized Debtor is a Delaware limited partnership. The Reorganized Debtor's headquarters and service address are 100 Crescent Court, Suite 1850, Dallas, TX 75201.

**STIPULATION REGARDING DEFENDANTS' MOTIONS TO WITHDRAW THE
REFERENCE**

This stipulation (the “Stipulation”) is made and entered into, subject to Court approval, in the above-captioned adversary proceeding (the “Adversary Proceeding”) by and among Marc S. Kirschner, as Litigation Trustee of the Litigation Sub-Trust (the “Litigation Trustee”), and the Defendants (“Defendants” and together with the Litigation Trustee, the “Parties”),² by and through their respective undersigned counsel.³ In support of the Stipulation, the Parties respectfully state as follows:

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (“HCMLP”), filed a voluntary petition for relief under title 11 of the United States Code with the United States Bankruptcy Court for the District of Delaware. The case was subsequently transferred to the Bankruptcy Court for the Northern District of Texas, Dallas Division and captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11;

WHEREAS, on October 15, 2021, the Litigation Trustee commenced the Adversary Proceeding by filing a complaint [Docket No. 1] (the “Complaint”);

WHEREAS, on November 16, 2021, the Parties entered into the Initial Response & Briefing Schedule [Docket No. 20], which was approved by the Court on December 17, 2021 [Docket No. 23];

² “Defendants” includes all defendants set forth in the case caption, except for SAS Asset Recovery, Ltd. Defendants who have filed motions to withdraw the reference include: Scott Ellington, Isaac Leventon, Frank Waterhouse, and CPCM, LLC (the “Former Employee Defendants”); Mark A. Okada (“Okada”), The Mark & Pamela Okada Family Trust – Exempt Trust #1 (“MPO Trust 1”) and Lawrence Tonomura in his Capacity as Trustee, and The Mark & Pamela Okada Family Trust – Exempt Trust #2 (“MPO Trust 2”) and Lawrence Tonomura in his Capacity as Trustee (collectively, the “Okada Defendants”); NexPoint Advisors L.P. (“NPA”) and Highland Capital Management Fund Advisors, L.P. (“HCMFA”); James Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc. (collectively, the “Dondero Defendants”); Grant James Scott III; and CLO Holdco, Ltd., Highland Dallas Foundation, Inc., Charitable DAF Fund, LP, and Charitable DAF Holdco, Ltd. (the “CLO Holdco-Related Defendants”).

³ This Stipulation is entered into without waiver of each Defendant’s right to challenge the basis for jurisdiction of the court in this case.

WHEREAS, on December 2, 2021, the Parties entered into the Scheduling Order [Docket No. 21], which was approved by the Court on December 17, 2021 [Docket No. 22];

WHEREAS, on January 18, 2022, the Former Employee Defendants filed the *Motion to Withdraw the Reference for Causes of Action in the Complaint Asserted Against the Former Employee Defendants* [Docket No. 27] (the “Former Employee Defendants’ Motion to Withdraw”);

WHEREAS, on January 21, 2022, the Okada Defendants filed the *Motion of the Okada Parties to Withdraw the Reference* [Docket No. 36] (the “Okada Defendants’ Motion to Withdraw”), and NPA and HCMFA filed the *Motion to Withdraw the Reference for the Causes of Action in the Complaint Asserted Against Defendants* [Docket No. 39] (the “NPA and HCMFA Motion to Withdraw”);

WHEREAS, on January 25, 2022, the Dondero Defendants filed *Defendants James D. Dondero, Dugaboy Investment Trust, Get Good Trust, and Strand Advisors, Inc.’s Motion to Withdraw the Reference* [Docket No. 45] (the “Dondero Defendants’ Motion to Withdraw”);

WHEREAS, on January 26, 2022, Defendant Grant James Scott III filed his *Motion to Withdraw the Reference* [Docket No. 50] (the “Scott Motion to Withdraw”) and the CLO Holdco-Related Defendants filed their *Motion to Withdraw the Reference* [Docket No. 59] (the “CLO Holdco-Related Defendants’ Motion to Withdraw” and collectively with the Former Employee Defendants’ Motion to Withdraw, the Okada Defendants’ Motion to Withdraw, the NPA and HCMFA Motion to Withdraw, the Dondero Defendants’ Motion to Withdraw, the Scott Motion to Withdraw, and any forthcoming motions to withdraw the reference, the “Motions to Withdraw”);

WHEREAS, pursuant to the Local Rules, the Litigation Trustee’s time to respond (a) to the Former Employee Defendants’ Motion to Withdraw is on or before February 8; (b) to the

Okada Defendants' Motion to Withdraw and the NPA and HCMFA Motion to Withdraw is on or before February 11; (c) to the Dondero Defendants' Motion to Withdraw is on or before February 15; and (d) to the Scott Motion to Withdraw and the CLO Holdco-Related Defendants' Motion to Withdraw is on or before February 16;

WHEREAS, on January 18, 2022, the Former Employee Defendants filed the *Motion to Stay the Adversary Proceeding Pending Resolution of the Motion to Withdraw the Reference* [Docket No. 30] (the "Stay Motion") and other Defendants joined in the Stay Motion. More specifically, the following Defendants have joined in the Stay Motion:

- a. The Okada Defendants joined in the Stay Motion on January 21, 2022, by filing their *Joinder of the Okada Parties to the Former Employee Defendants' Motion to Stay the Adversary Proceeding Pending Resolution of the Motion to Withdraw the Reference* [Docket No. 38];
- b. NPA and HCMFA joined in the Stay Motion on January 24, 2022, by filing their *Joinder of Defendants NexPoint Advisors LP and Highland Capital Management Fund Advisors LP to the Former Employee Defendants' Motion to Stay the Adversary Proceeding Pending Resolution of the Motion to Withdraw the Reference* [Docket No. 41];
- c. The Dondero Defendants joined in the Stay Motion on January 26, 2022, by filing their *Joinder of the Dondero Defendants to the Former Employee Defendants' Motion to Stay the Adversary Proceeding* [Docket No. 49]; and
- d. Defendant Grant James Scott joined in the Stay Motion on January 26, 2022, by filing his *Joinder of Defendant Grant James Scott to the Former Employee Defendants' Motion to Stay the Adversary Proceeding Pending Resolution of the*

Motion to Withdraw the Reference [Docket No. 52] (collectively, the “Stay Motions”); and

WHEREAS, the aforementioned Defendants have agreed, by separate Stipulation, to extend the Litigation Trustee’s deadline to respond to the Stay Motions to February 8, 2022.

NOW, THEREFORE, it is hereby stipulated and agreed, and upon approval by the Court it shall be **SO ORDERED**:

1. Any Motions to Withdraw that have not yet been filed shall be filed no later than February 1, 2022;

2. The Litigation Trustee’s response to the Motions to Withdraw shall be filed no later than 12:00 p.m. Central Time on March 4, 2022;

3. Movants’ reply briefs in support of the Motions to Withdraw shall be filed no later than 12:00 p.m. Central Time on March 14, 2022;

4. The status conference on all Motions to Withdraw provided for by Local Rule 5011-1(a) shall be held by this Court on March 17, 2022 at 9:30 a.m. Central Time, after which this Court will issue its report and recommendation under Local Rule 5011-1(b);

5. Any further proceedings on the Motions to Withdraw (if any) shall be scheduled as the Court provides;

6. All remaining deadlines in the Initial Response & Briefing Schedule and the Scheduling Order shall be extended by 30 days; and

7. This Stipulation Regarding Defendants’ Motions To Withdraw is without prejudice to all parties’ rights with respect to the Stay Motions.

Dated: January 31, 2022

Respectfully submitted,

SIDLEY AUSTIN LLP

/s/ Paige Holden Montgomery

Paige Holden Montgomery
Juliana L. Hoffman
2021 McKinney Avenue, Suite 2000
Dallas, Texas 74201
Telephone: (214) 981-3300
Facsimile: (214) 981-3400

-and-

**QUINN EMANUEL URQUHART &
SULLIVAN LLP**

Susheel Kirpalani (admitted *pro hac vice*)
Deborah J. Newman (admitted *pro hac vice*)
Robert Loigman (admitted *pro hac vice*)
Benjamin I. Finestone (admitted *pro hac vice*)
Jordan Harap (admitted *pro hac vice*)
Alexandre J. Tschumi (admitted *pro hac vice*)
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000

*Counsel for the Marc. S. Kirschner, as
Litigation Trustee of the Highland Litigation
Sub-Trust*

BAKER & MCKENZIE LLP

/s/ Debra A. Dandeneau

Michelle Hartmann
1900 North Pearl, Suite 1500
Dallas, Texas 75201
Telephone: 214-978-3000
Facsimile: 214-978-3099

and

Debra A. Dandeneau (admitted *pro hac vice*)
Blair Cahn (admitted *pro hac vice*)
452 Fifth Ave
New York, NY 10018
Telephone: 212-626-4875

*Counsel for Scott Ellington, Isaac Leventon,
Frank Waterhouse, and CPCM, LLC*

SULLIVAN & CROMWELL LLP

/s/ Brian D. Glueckstein

Brian D. Glueckstein (admitted pro hac vice)
New York Bar No. 4227005
gluecksteinb@sullcrom.com

125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000
Facsimile: (212) 558-3588

and

Cortney C. Thomas
Texas Bar No. 24075153
cort@brownfoxlaw.com
BROWN FOX PLLC
8111 Preston Road, Suite 300
Dallas, Texas 75225
Telephone: (214) 327-5000
Facsimile: (214) 327-5001

*Counsel for Defendants Mark Okada, The
Mark and Pamela Okada Family Trust –
Exempt Trust #1 and Lawrence Tonomura as
Trustee, and The Mark and Pamela Okada
Family Trust – Exempt Trust #2 and
Lawrence Tonomura as Trustee*

STINSON LLP

/s/ Deborah Deitsch-Perez

Deborah Deitsch-Perez
Texas State Bar No. 24036072
Michael P. Aigen
Texas State Bar No. 24012196
3102 Oak Lawn Avenue, Suite 777
Dallas, Texas 75219-4259
Telephone: (214) 560-2201
Email: deborah.deitschperez@stinson.com
Email: michael.aigen@stinson.com

*Attorneys for Defendants Nexpoint Advisors,
L.P. and Highland Capital Management Fund
Advisors, L.P.*

DLA PIPER LLP (US)

/s/ Amy L. Ruhland
Amy L. Ruhland (Rudd)
Texas Bar No. 24043561
Amy.Ruhland@us.dlapiper.com
303 Colorado Street, Suite 3000
Austin, TX 78701
Tele: 512.457.7000

Jason M. Hopkins
Texas Bar No. 24059969
1900 N. Pearl Street, Suite 2200
Dallas, Texas 75201
Tel: 214-743-4500/Fax: 214-743-4545
Email: jason.hopkins@us.dlapiper.com

*Attorneys for Defendants James Dondero,
Dugaboy Investment Trust, Get Good Trust,
and Strand Advisors, Inc.*

**KANE RUSSELL COLEMAN LOGAN
PC**

/s/ John J. Kane
John J. Kane
State Bar No. 24066794
Brian W. Clark
State Bar No. 24032075
901 Main Street, Suite 5200
Dallas, Texas 75202
Telephone - (214) 777-4200
Telecopier - (214) 777-4299
E-mail: jkane@krcl.com
E-mail: bclark@krcl.com

Attorneys for Defendant Grant James Scott

KELLY HART PITRE

/s/ Louis M. Phillips

Louis M. Phillips (#10505)
One American Place
301 Main Street, Suite 1600
Baton Rouge, LA 70801-1916
Telephone: (225) 381-9643
Facsimile: (225) 336-9763
Email: louis.phillips@kellyhart.com
Amelia L. Hurt (LA #36817, TX #24092553)
400 Poydras Street, Suite 1812
New Orleans, LA 70130
Telephone: (504) 522-1812
Facsimile: (504) 522-1813
Email: amelia.hurt@kellyhart.com

and

KELLY HART & HALLMAN

Hugh G. Connor II
State Bar No. 00787272
hugh.connor@kellyhart.com
Michael D. Anderson
State Bar No. 24031699
michael.anderson@kellyhart.com
Katherine T. Hopkins
Texas Bar No. 24070737
katherine.hopkins@kellyhart.com
201 Main Street, Suite 2500
Fort Worth, Texas 76102
Telephone: (817) 332-2500

*Attorneys for Defendants CLO HoldCo, Ltd.,
Charitable DAF HoldCo, Ltd., Charitable
DAF Fund, L.P., and Highland Dallas
Foundation*